

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:05-CV-238-MU**

WILLIAM L. PENDER, et al.,                          )  
  )  
  )  
Plaintiffs,   )  
  )  
  )  
vs.    )  
  )  
BANK OF AMERICA CORP., et al.,                    )  
  )  
  )  
Defendants.   )  
  )  
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**ORDER**

THIS MATTER is before the Court upon Plaintiffs' Motion for Leave to File Fourth Amended Complaint [D.I. 248]. For the reasons laid out below, the Plaintiffs' Motion is **GRANTED**.

Leave to amend under Federal Rule of Civil Procedure 15(a) is to be "freely given when justice so requires." Fed. R. Civ. P. 15(a). Leave to amend is only to be denied when the amendment would be futile, the moving party has acted in bad faith or has repeatedly failed to cure deficiencies in prior amendments, the opposing party would experience undue prejudice or the moving party has unduly delayed. Foman v. Davis, 371 U.S. 178, 182 (1962). "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." Id. Particularly in light of the addition of a new party, the Court feels leave to amend is appropriate here. The Defendants have failed to show undue prejudice, bad faith, futility, delay or failure to cure deficiencies. However, the Court takes heed of Defendants' objection that the pleadings need not be amended each time new evidence is unearthed, and cautions the Plaintiffs that the "freely given" language of Rule 15(a)(2) is not to be abused. The Plaintiffs are hereby given leave to file the Fourth

Amended Complaint.

**SO ORDERED.**

Signed: January 28, 2011



Graham C. Mullen  
United States District Judge

